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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, ) Case No. 11CR1445-WQH

Plaintiff, )

v. )

FINDINGS OF FACT, REVOCATION  
OF BOND, AND ORDER OF DETENTION  
PURSUANT TO 18 U.S.C. § 3148

STEVEN MARTINEZ, )

Defendant. )

In accordance with 18 U.S.C. § 3148 of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), this Court conducted a bond hearing on March 15, 2012 to determine whether defendant STEVEN MARTINEZ (the "Defendant") should be held in custody pending trial, on the grounds that he violated his pretrial release conditions, is a flight risk and poses a danger to the community. Assistant U.S. Attorney Joseph J.M. Orabona appeared on behalf of the United States. Attorney David Demergian appeared on behalf of the Defendant.

Based on the Superseding Indictment in Criminal Case No. 11CR1445-WQH, the evidence proffered by the United States and by the Defendant, the Pretrial Services Report, and the Complaint and Affidavit in Magistrate Case No. 12MJ0767, the Court concludes that the following facts establish by a preponderance of the evidence (with

1 respect to risk of flight) and by clear and convincing evidence (with  
2 respect to danger to the community) that no condition or combination  
3 of conditions will reasonably assure the appearance of Defendant as  
4 required:

5 **I**

6 **THE LAW GENERALLY**

7 A. In accordance with 18 U.S.C. § 3148, a person who has been  
8 released under 18 U.S.C. § 3142 and who violates a condition of  
9 release is subject to revocation of release and an order of detention.  
10 See 18 U.S.C. § 3148(a).

11 B. After a hearing, the judicial officer shall enter an order  
12 of revocation and detention if the officer finds that there is (1)(A)  
13 probable cause to believe that the person has committed a Federal,  
14 State, or local crime while on release; or (B) clear and convincing  
15 evidence that the person has violated any other condition of release;  
16 and (2)(A) based on the factors set forth in § 3142(g), there is no  
17 condition or combination of conditions of release that will assure  
18 that the person will not flee or pose a danger to the safety of any  
19 other person or the community; or (B) the person is unlikely to abide  
20 by any condition or combination of conditions of release. See 18  
21 U.S.C. § 3148(b).

22 C. Further, if there is probable cause to believe that, while  
23 on release, the person committed a Federal, State, or local felony,  
24 a rebuttable presumption arises that no condition or combination of  
25 conditions will assure that the person will not pose a danger to  
26 the safety of any other person or the community. See 18 U.S.C.  
27 § 3148(b)(2)(B).

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II

## FINDINGS OF FACT

**A. Nature and Circumstances of the Offenses Charged**

4           1. On April 14, 2011, Defendant was charged in a 49-count  
5 Indictment in Criminal Case No. 11CR1445-WQH with: (1) 6 counts of  
6 Mail Fraud (18 U.S.C. § 1341); (2) 14 counts of Procuring a False Tax  
7 Return (26 U.S.C. § 7206(2)); (3) 12 counts of Social Security Fraud  
8 (42 U.S.C. § 408(a)(8)); (4) 12 counts of Aggravated Identity Theft  
9 (18 U.S.C. § 1028A); (5) 4 counts of Making a False Tax  
10 Return (26 U.S.C. § 7206(1)); (6) 1 count of Money Laundering  
11 (18 U.S.C. § 1957); and (7) Criminal Forfeiture.

12           2. On April 21, 2011, Defendant was released following the  
13 posting of a \$350,000 property bond. Defendant signed the Advice of  
14 Penalties and Sanctions Form.

15                   2. On March 2, 2012, Defendant, while on pretrial release,  
16 was arrested and charged, in Magistrate Case No. 12MJ0767, with  
17 Witness Tampering, in violation of 18 U.S.C. § 1512(a)(1)(A).

18           3. On March 9, 2012, Defendant was charged in a 55-count  
19 Superseding Indictment in Criminal Case No. 11CR1445-WQH with: (1) 6  
20 counts of Mail Fraud (18 U.S.C. § 1341); (2) 14 counts of Procuring  
21 a False Tax Return (26 U.S.C. § 7206(2)); (3) 12 counts of Social  
22 Security Fraud (42 U.S.C. § 408(a)(8)); (4) 12 counts of Aggravated  
23 Identity Theft (18 U.S.C. § 1028A); (5) 4 counts of Making a False Tax  
24 Return (26 U.S.C. § 7206(1)); (6) 1 count of Money (18 U.S.C. § 1957);  
25 (7) 4 counts of Witness Tampering (18 U.S.C. § 1512(a)(1)(A));  
26 (8) 1 count of Using a Facility of Interstate Commerce in Commission  
27 of Murder-For-Hire (18 U.S.C. § 1958); (9) 1 count of Solicitation of  
28 a Crime of Violation (18 U.S.C. § 373); and (10) Criminal Forfeiture.

1               2. Probable cause exists to believe that Defendant has  
2 committed additional felony offenses while on pretrial release,  
3 namely, Witness Tampering, Using a Facility of Interstate Commerce in  
4 Commission of Murder-For-Hire, and Solicitation of a Crime of  
5 Violence, as charged in Counts 50 through 55 of the Superseding  
6 Indictment in Criminal Case No. 11CR1445-WQH.

7               3. Each count of Mail Fraud charged in the Superseding  
8 Indictment carries a maximum term of 20 years in prison; a maximum  
9 fine of the greatest of: (1) \$250,000, and (2) two times the gross  
10 gain or gross loss derived from the offense, all pursuant to 18 U.S.C.  
11 § 3571(b) and (d); a term of supervised release of not more than 3  
12 years; and mandatory restitution.

13              4. Each count of Procuring a False Tax Return charged in  
14 the Superseding Indictment carries a maximum term of 3 years in  
15 prison; a maximum fine of \$100,000; and a term of supervised release  
16 of not more than 1 year.

17              5. Each count of Social Security Fraud charged in the  
18 Superseding Indictment carries a maximum term of 5 years in prison;  
19 a maximum fine of \$100,000; and a term of supervised release of not  
20 more than 1 year.

21              6. At least one count of Aggravated Identity Theft charged  
22 in the Superseding Indictment carries a minimum mandatory 2-year term  
23 of imprisonment consecutive to any other sentence imposed.

24              7. Each count of Making a False Tax Return charged in the  
25 Superseding Indictment carries a maximum of 3 years in prison; a  
26 maximum fine of \$100,000; and a term of supervised release of not more  
27 than 1 year.

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1           8. Each count of Witness Tampering charged in the  
2 Superseding Indictment carries a maximum term of 30 years in prison;  
3 a maximum fine of \$250,000; and a term of supervised release of not  
4 more than 3 years.

5           9. The offense of Using a Facility of Interstate Commerce  
6 in Commission of Murder-for-Hire charged in the Superseding Indictment  
7 carries a maximum term of 10 years in prison; a maximum fine of  
8 \$250,000; and a term of supervised release of not more than 3 years.

9           10. The offense of Solicitation of a Crime of Violence  
10 charged in the Superseding Indictment carries a maximum term of  
11 15 years in prison; a maximum fine of \$125,000; and a term of  
12 supervised release of not more than 3 years.

13           **B. Weight of the Evidence Against the Defendant**

14           1. Although the weight of the evidence against the  
15 Defendant is the least important factor, the Court finds that probable  
16 cause exists to believe that the Defendant has committed the offenses  
17 charged in the Superseding Indictment.

18           **C. History and Characteristics of the Defendant**

19           1. While Defendant is a United States citizen, he has ties  
20 to Mexico and owns property located north of Puerto Vallarta, Mexico.

21           2. Defendant has family ties in San Diego County, and  
22 resides in Ramona, California.

23           3. Defendant has financial resources. Defendant also owns  
24 several vehicles.

25           4. Defendant has engaged in a tax preparation business in  
26 this community, and this employment is directly related to conduct and  
27 offenses charged.

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1           5. Defendant has no known physical or mental conditions,  
2 no criminal history, no known past conduct, no drug/alcohol abuse, no  
3 known record concerning any court appearances, and no outstanding term  
4 of probation, parole, or supervised release.

**D. Danger to the Community**

6               1.     Defendant poses a danger to the community because there  
7 is probable cause to believe that, while on pretrial release,  
8 Defendant committed another federal felony, to wit: Witness Tampering,  
9 Using a Facility of Interstate Commerce in Commission of Murder-For-  
10 Hire, and Solicitation of a Crime of Violence.

11                   2. According to the Superseding Indictment, Defendant  
12 allegedly attempted to kill and murder witnesses in order to prevent  
13 their testimony and attendance in an official proceeding in Criminal  
14 Case No. 11CR1445-WOH.

#### **E. Rebuttable Presumption**

16           1. The Court held a hearing on March 15, 2012. Based upon  
17 the evidence presented and proffered at the hearing, the evidence  
18 previously presented and proffered at the bail hearing on April 18,  
19 2011, and the factors set forth in 18 U.S.C. § 3142(g), the Court  
20 concluded that the presumption of detention had not been rebutted.

III

## **REASONS FOR DETENTION**

23 A. There is probable cause to believe that Defendant committed  
24 the additional felony offenses charged in Counts 50 through 55 of the  
25 Superseding Indictment in Criminal Case No. 11CR1445-WQH, to wit:  
26 Witness Tampering, Use of Facility of Interstate Commerce in  
27 Commission of Murder-For-Hire, and Solicitation of a Crime of  
28 Violence.

1       B. As there is probable cause to believe that, while on  
2 pretrial release, Defendant violated the law, the rebuttable  
3 presumption arises that no condition or combination of conditions will  
4 assure he will not pose a danger to the safety of any other person or  
5 the community, as provided in 18 U.S.C. § 3148(b)(2)(B).

6       C. Defendant did not present sufficient evidence to overcome  
7 the presumption, and therefore, the Court finds that based on the  
8 factors set forth in 18 U.S.C. § 3142(g), there is no condition or  
9 combination of conditions of release that will assure that Defendant  
10 does not pose a danger to the safety of any other person or the  
11 community.

12      D. The Court finds that the continued release of Defendant  
13 would pose a danger that he will continue to engage in corrupt  
14 behavior to thwart the ends of justice.

15                          **IV**

16                          **ORDER**

17      IT IS HEREBY ORDERED that the pretrial Order Setting Conditions  
18 of Release (Docket No. 9 in Criminal Case No. 11CR1445-WQH) is hereby  
19 REVOKED and Defendant be detained pending trial in this matter.

20      IT IS FURTHER ORDERED that Defendant be committed to the custody  
21 of the Attorney General or his designated representative for  
22 confinement in a corrections facility separate, to the extent  
23 practicable, from persons awaiting or serving sentences or being held  
24 in custody pending appeal. Defendant shall be afforded reasonable  
25 opportunity for private consultation with counsel.

26      While in custody, upon order of a court of the United States or  
27 upon the request of an attorney for the United States, the person in  
28 charge of the correctional facility shall deliver Defendant to the

1 United States Marshal for the purpose of an appearance in connection  
2 with a court proceeding or any other appearance stipulated to by  
3 defense and government counsel.

4 THIS ORDER IS ENTERED WITHOUT PREJUDICE.

5 IT IS SO ORDERED.

6  
7 DATED: 3/19/2012

  
\_\_\_\_\_  
THE HONORABLE MITCHELL D. DEMBIN  
United States Magistrate Judge  
Southern District of California

10  
11 Prepared by:

12 /s/ Joseph J.M. Orabona  
13 JOSEPH J.M. ORABONA  
14 Assistant U.S. Attorney

15 cc: David Demergian, Esq.  
16 Geoffrey Morrison, Esq.

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